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Supreme Court, U.S.
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No. 00-1067

In The Supreme Court of the United States

BILLY PATIN,

Petitioner,

v.

LARRY MUNSTER, E. J. FAYARD, and C. L.WEBB,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of the State of Louisiana

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PETITIONER'S REPLY BRIEF

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ARGUMENT

Respondents skillfully, but in the end ineffectively, attempts to recast Petitioner's claim below. It bears repeating that Petitioner's license was revoked not because of anything he is alleged to have done in Louisiana. Instead, his license was revoked based on acts he is alleged to have committed in Arkansas. Had the issue been his entitlement to a racing license in Louisiana in the first instance, then the statutory authority cited by Respondent, La. R.S.A. § 4:150(B), might be of some persuasive effect. Having been awarded a license, the Louisiana Racing Commission may not deprive a licensee of his license simply by submission of some hearsay evidence of his suspension elsewhere. To have done so necessarily required that the administrative determination of the Arkansas Racing Commission be given conclusive effect in Louisiana, without Petitioner's having had a realistic opportunity to contest it.

To its credit, Respondents acknowledge that Petitioner has a substantial property right in his jockey's license, of which he may not be deprived without due process of law. *Barry v. Barchi*, 433 U.S. 55 (1979). Respondents sidestep the issue of whether Petitioner has been deprived of a substantive right protected by the Fourteenth Amendment by characterizing his claim as one exclusively for a denial of procedural due process. Respondent, in effect, is arguing the long-discredited theory that a claim under 42 U.S.C. § 1983 is barred by failure to exhaust administrative remedies.

The question whether exhaustion of administrative remedies should ever be required in a § 1983 action has prompted vigorous debate and disagreement. . . . Our resolution of this issue, however, is made much easier because we are not writing on a clean slate. This Court has addressed this issue, as well as related issues, on several prior occasions.

Respondents suggest that our prior precedents do not control our decision today, arguing that these cases can be distinguished on their facts or that this Court did not "fully" consider the question whether exhaustion should be required. This contention need not detain us long. Beginning with *McNeese v. Board of Education*, 373 U.S. 668, 671-673 (1963), we have on numerous occasions rejected the argument that a § 1983 action should be dismissed where the plaintiff has not exhausted state administrative remedies. *See Barry v. Barchi*, 443 U.S. 55, 63, n. 10 (1979); *Gibson v. Berryhill*, 411 U.S. 564, 574 (1973); *Carter v. Stanton*, 405 U.S. 669, 671 (1972); *Wilwording v. Swenson*, 404 U.S. 249, 251 (1971); *Houghton v. Shafer*, 392 U.S. 639, 640 (1968); *King v. Smith*, 392 U.S. 309, 312, n. 4 (1968); *Damico v. California*, 389 U.S. 416 (1967). *Cf. Steffel v. Thompson*, 415 U.S. 452, 472-473 (1974)

> ("When federal claims are premised on [§ 1983]—as they are here—we have not required exhaustion of state judicial or administrative remedies, recognizing the paramount role Congress has assigned to the federal courts to protect constitutional rights"). Respondents may be correct in arguing that several of these decisions could have been based on traditional exceptions to the exhaustion doctrine. Nevertheless, this Court has stated categorically that exhaustion is not a prerequisite to an action under § 1983, and we have not deviated from that position in the 19 years since *McNeese*.

Patsy v. Board of Regents of the State of Florida, 457 U.S. 496, 500-01 (1982) (citations omitted).

Here, of course, Petitioner claims that he was denied a substantial property interest—his racing license—without having had a meaningful opportunity to challenge that deprivation. Respondent, rather than grappling with that issue, dismisses it, arguing that the real deprivation of which Petitioner complains could only have been committed by the Louisiana Racing Commission, not the stewards, even though as a result of the stewards' action, Petitioner could not race in Louisiana. His "hearing" to challenge that deprivation was held on a few hours' (not days, but hours) notice. At that hearing, his license was revoked, not suspended, based solely on an unconfirmed determination by the racing commission in another state.

Respondents argue that it is enough that Petitioner could hope to have the actions of the stewards undone by the Racing Commission at some indeterminate time in the future. The review procedure that Respondents claim was adequate would have compelled Petitioner to challenge an out-of-state administrative determination that had already been given conclusive effect by the racing stewards. The presumption that should attach to every licensee—that he should be entitled to retain his license until facts are proven that warrant revoking it—in this case was precisely reversed. Instead, Petitioner was placed in the position of having to refute a decision already made on the basis of another's state's administrative determination.

Respondents' position simply dismisses Petitioner's claim of a substantive due process deprivation, maintaining that this case is simply one of a deprivation of procedural due process. To be sure, a procedural due process deprivation did occur here. Of much more significance to this Court's deliberations, however, is the substantial *substantive* due process right of which Petitioner was deprived. Simply ignoring that deprivation, which is the choice offered by the Respondents, simply will not do. To vindicate Petitioner's substantive due process deprivation, the Court must grant the petition in this case. Although *Barry v. Barchi* informs the property interest to be protected here, it does not control the outcome.

That the Racing Commission would confirm the revocation of Petitioner's racing license is preordained by the posture in which his case left the racing stewards, regardless of

what appellate procedural review was afforded him. The promptness, even the availability of that review is not what is at issue here. Much less is it relevant that he did not exhaust his administrative remedies, as the Court has made clear so often in the past. Before the administrative determination by the racing commission in Arkansas could be given preclusive effect by the Louisiana racing stewards, the Louisiana statutory procedure for confirming foreign judgments must have been followed. That Respondents failed to do so deprived Petitioner of a right conferred on all other Louisiana citizens. That right can be vindicated only by granting Petitioner the right to a trial in Louisiana state court. It is for that opportunity that Petitioner looks to this Court, and nothing more.

CONCLUSION

WHEREFORE, the Petitioner respectfully requests that a writ of certiorari issue to the Supreme Court of the State of Louisiana in this case and that, after full briefing and argument, this Court reverse the judgment of the Court of Appeal of Louisiana and direct that the case be remanded to the Circuit Court for the Parish of Lafayette for trial.

Respectfully submitted,

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